

MEMORANDUM OF LAW

DATE: July 25, 1985

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Designation of Candidate's Title For the Ballot

By memorandum of July 22, 1985, you requested our review of San Diego Municipal Code section 27.2201 in light of a council-member's request to be listed on the ballot as "Incumbent City Council Member."

In pertinent part, the San Diego Municipal Code provides:

SEC. 27.2201 DESIGNATION OF CANDIDATE'S TITLE

A candidate who is running for the same elective office which he then holds shall have printed on the ballot, immediately underneath his name, at his option, the word "Incumbent" or not more than four words designating such

elective office, or any other words not exceeding four in number designating the principal profession, vocation or occupation of the candidate ....

The ordinance employs the conjunction "or" which provides the candidate a choice of three (3) alternatives: 1) Incumbent, 2) not more than four (4) words designating such elective office or 3) any other words not exceeding four (4) designating the principal profession, vocation or occupation. The use of the disjunctive term "or" indicates an alternative, but not all. *Holman v. County of Santa Barbara*, 91 Cal.App.2d 502, 520 (1949); *Eason v. City of Riverside*, 233 Cal.App.2d 190, 193 (1965).

In a 1966 opinion, the California Attorney General in construing California Elections Code section 10301 which provided for alternative designations in a fashion similar to the Municipal Code section in question, opined that a candidate for public office who is an incumbent seeking re-election may use the title of his office as a ballot designation or he may use the term "incumbent," but the term "incumbent" and the title of the office may not both be used. While not binding on us, the opinion is persuasive argument for the proposition.

Thus, since our ordinance uses the disjunctive, the candidate

must choose one (1) of the three (3) alternatives, but cannot elect a combination.

JOHN W. WITT, City Attorney

By

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Assistant City Attorney

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